IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL CASE NO. 1:20-cv-00147-MR (CRIMINAL CASE NO. 1:15-cv-00075-MR-WCM-3)

RANDALL WAYNE BANFIELD,)
Petitioner,)) \
vs.	,)
UNITED STATES OF AMERICA,) ORDER
Respondent.	<i>)</i>) \

THIS MATTER is before the Court on Petitioner's filing of a Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody under 28 U.S.C. § 2255 [Doc. 1] and Motion to Place Case in Abeyance [Doc. 3].

Petitioner filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 through counsel on June 17, 2020. [Doc. 1]. He argues that his guilty plea to violating 18 U.S.C. § 922(g) is invalid and violates due process pursuant to Rehaif v. United States, 139 S.Ct. 2191 (2019). Petitioner asks the Court to hold the § 2255 Motion to Vacate in abeyance pending the issuance of the Fourth Circuit's mandate in <u>United States v. Gary</u>, 954 F.3d 194 (4th Cir. 2020), which is presently pending on the Government's petition for *en banc*

review. Petitioner argues that his § 2255 Motion to Vacate depends in part on the Fourth Circuit's holding in <u>Gary</u> that a defendant can establish structural error by showing that a guilty plea was entered without an understanding of the knowledge element articulated in <u>Rehaif</u>. Assistant United States Attorney Amy Ray consents to a stay of this action pending the Fourth Circuit's issuance of the mandate in Gary.¹ [Doc. 3 at 2].

The Court finds that the Motion to Place Case in Abeyance is in the interest of justice and judicial economy and will be granted.

IT IS, THEREFORE, ORDERED that Petitioner's Motion to Place Case in Abeyance [Doc. 3] is **GRANTED**. The Government shall have **30 days** following the Fourth Circuit's issuance of its mandate in <u>Gary</u> to file an answer, motion, or other response to the § 2255 Motion to Vacate.

IT IS SO ORDERED.

Signed: June 23, 2020

Martin Reidinger

Chief United States District Judge

¹ Counsel for the Government has not yet entered an appearance in this case.